



## APPENDIX.

### 1. The Board's Brief (page 4) states that:

"In May, 1941, when Babbitt was chairman of the Union, a strike was called under his leadership, *principally because of petitioner's refusal to discuss a lay-off program with the organization.*"

The italicized language is based upon a false assumption of the brief writer. There is neither a Board finding nor any evidence in support of such statement.

There were a number of factors involved in the strike at Petitioner's Studio at the end of May, 1941. The principal cause, in Petitioner's belief, was one at least partially ascribable to the Board itself: Petitioner's employees had formed a union several years before and had, through proper proceedings before the Board, obtained certification that it was the proper bargaining unit for employees in the classifications involved. [R. 239, 240.] This certification was in full force and effect in the spring of 1941. A different union, the Screen Cartoonists Local 852, began its organizational activities of Petitioner's employees in the fall of 1940, and at that time claimed to have a majority of the employees. [R. 283.] It was an extremely doubtful and completely unsettled matter as to which union represented the majority. Furthermore, the Screen Cartoonists Local 852 claimed that the other union, certified by the Board as the proper bargaining unit, was company-dominated. Under these circumstances, it was absolutely necessary for the Board to exercise its jurisdiction and determine which represented the majority. This, Petitioner specifically requested the Board to do. [R. 1220-1225.] Nevertheless, the Board refused to exercise its jurisdiction. [R. 1223-1225.]—This, Petitioner believes, was one of

the main causes of the strike. Petitioner at all times publicly announced the policy which it consistently pursued, that it would bargain collectively with the union representing the majority of its employees, as determined at a proper election. These facts demonstrate the inaccuracy in the Board's brief, that Petitioner's alleged refusal to discuss a layoff with the Union was the principal cause for the ensuing strike.

2. The Board's Brief (page 4), states that:

"The arbitrators took cognizance in their award of petitioner's resentment toward Babbitt by making a special provision for his reinstatement and against his discharge in connection with reorganization, except for cause [R. 43-45]."

It is merely the briefwriter's unsupported assumption that the arbitrators took cognizance in their award of any alleged resentment by making a special provision for Babbitt's reinstatement.

The only thing in the Record is the provision in the arbitrators' award of August 2, 1941 [R. 43] stating that:

"However, with respect to the case of Art Babbitt, it is the judgment of the arbitrators that he be reinstated to his former position and not subject to discharge incident to reorganization except for cause."

3. The Board's Brief (page 5), states that, after Babbitt's reinstatement of September, 1941, following the close of the strike:

"He was given less desirable working quarters, deprived for a time of essential equipment, and denied important or substantial assignments [R. 45-46, 57, 58.]"

Babbitt complained that the room he had worked in before the strike had been assigned to another employee and that when he went back to work on September 17, 1941, he was assigned to a different room (Board's Brief, page 19.) Babbitt likewise complained that his new room was without a moviola used in viewing test film in the course of animation.

The true condition was fully explained by Petitioner [R. 782-783.] The room Babbitt had formerly worked in was located at the far end of the corridor and had an adjoining small room for an assistant. The only difference between the former room and the room he was placed in on reinstatement was the fact that it was not at the far end of the corridor and did not have the small adjoining room for the assistant. But from the standpoint of space, air conditioning, lights, drawing board and all other things required for an animator, it was identical with his former room. Personnel were frequently transferred and there was no intention of not furnishing him the best possible working conditions. In addition, the moviola was placed in the room within a few days and as quickly as possible, having in mind the confusion incident upon reorganization of the Studio following the strike, then the closing down of the Studio for several weeks, and the layoff of 263 employees. [R. 782-783.]

The statement that Babbitt was "denied important or substantial assignments" is no doubt based upon the Board's purported finding [R. 58] that:

"The evidence leads directly to the conclusion, and the Trial Examiner so finds, that Adelquist purposely avoided assigning work to Babbitt, \* \* \*"

There is not one shred of evidence to support this finding. It rests upon the sheerest speculation on the Board's part. On the contrary, the affirmative testimony of Adelquist is that he made every effort possible to find work for Babbitt during this period after his reinstatement in September, 1941, and before his layoff on November 24, 1941. [R. 735-739.] This testimony of Adelquist was corroborated by Director Lundy [R. 1087-1089] and by Director Kinney [R. 1054-1055], among others.

If there was work available during this period, it is remarkable that Petitioner's management found itself compelled to lay off 98 employees on November 24, 1941, including six in its animation department. The undisputed evidence is that the animation department was reduced since that date from 25 animators to 12 to 15. [R. 724.] The undisputed facts are therefore simply contrary to the finding of the Board in this connection.

Petitioner's casting director, Mr. Adelquist, stated the true explanation for Babbitt's layoff on November 24, 1941, in the following manner:

After reporting the urgency for reducing personnel in all departments, including the animation department, due to slackened production, Adelquist and three or four other supervisors were faced with the task of selecting 100 employees to be given layoff notices. Of these 100, six of

thirty-one animators then employed were to be given immediate layoff. Five more animators were to be given notices effective when their present work assignments were completed.

A general policy was followed by Adelquist and the Supervisors in making these selections consisting of a composite of these factors affecting the animation department personnel:

- (1) Present assignments of each person;
- (2) Available work for each person;
- (3) Versatility—usefulness throughout plant on all types of work, including Story Department work;
- (4) Specialists—animating Mickey Mouse, Donald Duck, Pluto and Goofy characters.

Babbitt was selected for layoff by Adelquist and the other Supervisors on the same basis as the other animators were selected for layoff. Adelquist testified positively as to the work Babbitt was then doing, as to the work available for him, on the question of his versatility and his specialty:

(1) Babbitt ran out of work on November 15, 1941. [R. 736.]

(2) Additional work was not available for Babbitt though Adelquist made every effort to find further work. [R. 736, 737, 739.]

(3) Babbitt was not versatile. He never animated Donald Duck, Mickey Mouse or Pluto. He never worked in the Story Department. [R. 740-741, 744-745.]

(4) His specialty, apart from feature-length pictures of which there was none in production, was a character known as "Goofy," but his animation of that character was not equal to the animation done by Reitherman who was the one selected for retention. [R. 742-744.]

A selection of six of thirty-one artists to be laid off involves matters of judgment, taste and appraisal of aesthetic qualities upon a *comparative basis*. The question is not whether the ones selected were not able to animate. Rather, did each animator meet the foregoing tests better than the others? On *comparative abilities*, Adelquist stated his opinion flatly that, from the standpoint of work available at the time, the animators retained in Petitioner's employ possessed greater merit and ability than Babbitt. [R. 740.] He gave the bases for his opinion in detail [R. 740-745] which may be summarized as follows:

(i) The work in production was mainly on short subjects of Donald Duck and Pluto. Babbitt never worked on and never specialized on those particular characters.

(ii) The men retained were better qualified from a standpoint of versatility on both shorts and features and any type of work, including transfer to the Story Department.

(iii) Being then over-produced on short subjects, it was necessary to retain the organized animation crews of men specializing on Donald Duck and Pluto; and he listed some of the men retained who were specialists on these subjects.

(iv) Babbitt's animation of the special character "Goofy" was not what the studio desired; there were other

men capable of producing the character as desired, particularly Reitherman, who was head of the animation unit specializing on Goofy; and the Director of the Goofy unit, Jack Kinney, preferred Reitherman's animation of this character to that of Babbitt.

(v) Many of the men retained were experienced in Story Department work, whereas Babbitt had never done story work and in Adelquist's opinion he would not work out in that department.

Each ground of Adelquist's explanation is corroborated by a number of undisputed facts in the Record:

(i) *Adelquist Sought to Obtain Further Work for Babbitt When He Ran Out of Work Assignments in November, 1941.*

Director Kinney, in charge of the "Goofy" unit (which character Babbitt claimed as his specialty [R. 427] corroborated Adelquist in this respect by testifying that he was asked in November, 1941, for further work for Babbitt and advised there was none in his unit at that time. [R. 1054-1055.] Director Lundy also corroborated Adelquist in this respect. Lundy directed one of the short subject pictures that Babbitt helped animate after the studio reopened in September, 1941. He testified that either Adelquist or Babbitt had requested him for further work in November, 1941, but that none was available in his unit. [R. 1093.]

(ii) *Work Available for Babbitt in November, 1941.*

The only two feature length pictures in production were ordered shelved in early November, 1941 and completely shelved by November 29, 1941. As the Government pictures involved very little animation, this left only the short-



subject pictures available for thirty-one animators to work on. [R. 740.]

Specialization in animating the short subjects resulted in the main part of the available work being on Donald Duck and Pluto pictures. [R. 740.] There were several animation units where the attached animators had for some years done nothing but Donald Duck and Pluto work and were specialists with whose work the studio was entirely satisfied. [R. 712.]

Babbitt conceded that he never animated Donald Duck. [R. 425-426.] Babbitt did not claim to be a specialist on Pluto [R. 426], and the undisputed testimony is that he did not specialize on that character. [R. 740.] Babbitt did not claim to be a specialist on Mickey Mouse [R. 426] and the uncontradicted evidence is that he had not satisfactorily animated that character. [R. 1266-1267.]

This meant that, considering the available work in production at the time, the only short subject character that Babbitt was experienced in animating was the character "Goofy." [R. 1049-1050.]

There was one animation unit doing the "Goofy" work, under the direction of Director Jack Kinney. [R. 1050.] The head animator for this "Goofy" unit was Woollie Reitherman, who worked directly in conjunction with Director Kinney. [R. 743.]

Kinney testified positively that Reitherman's animation of the "Goofy" character was superior to that of Babbitt's animation of the same character and that if he had the choice between the two animators, he would have chosen Reitherman. [R. 1062-1065.]

Kinney testified, without contradiction, that there was no further work available on the "Goofy" unit for Babbitt

in November, 1941 and that he had so advised Babbitt. [R. 1054-1055.]

The uncontradicted evidence, therefore, corroborates Adelquist that there was no available work for Babbitt in November, 1941.

(iii) *Babbitt Was Not Versatile.*

Babbitt had not animated the specialized characters which carried most of the short subjects then in production, Mickey Mouse, Donald Duck and Pluto. He had no experience in working in the Story Department [R. 744-745], although many of the animators retained have since November, 1941, been transferred to and are employed full time in the Story Department. [R. 744.] Thus, as compared with the other animators who were retained, and in the light of the short-subject program then in production, the uncontradicted evidence fully corroborates Adelquist's testimony that Babbitt was not versatile.

(iv) *Babbitt's Specialty.*

In the one short-subject character specialized in by Babbitt, the character "Goofy," the undisputed evidence shows Babbitt inferior to the head of that unit, Reitherman, the man retained. The testimony of Director Kinney on the comparative abilities of Babbitt and Reitherman in animating the character "Goofy," and the available work in the "Goofy" unit, standing without contradiction, is such significant corroboration of Adelquist's explanation that we request the Court to read Kinney's testimony in full. [R. 1048-1085.]

4. The Board's Brief (p. 5) states that:

"The Union discussed many of the lay-offs with petitioner as grievances under the grievance procedure set up in the arbitrators' award."

The fact is that 10 of the 98 persons laid off on November 24, 1941, filed grievances with the Union which were taken up and satisfactory disposition of each case resulted. [R. 843, 846, 862.]

5. The Board's Brief (p. 5) in stating that Babbitt's case was not presented as a grievance, states that:

"Because, according to the arbitrators' award, he was not subject to lay-off, except for cause, and it was considered, accordingly, that his case fell into a category different from that of the other lay-offs."

The Board omits a very vital condition of the arbitrators' award in this respect by neglecting to add the clause "incident to reorganization." This important condition is gone into at length in the footnote on page 6 of the petition for writ of certiorari. The briefwriter's omission of this important clause is inexcusable.

